

EMPLOYER STATUS DETERMINATION
SEMO Port Railroad, Inc.
Respondek Railroad Corporation

This is the determination of the Railroad Retirement Board regarding the status of the SEMO Port Railroad, Inc. (SEMO) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) (RRA) and Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.) (RUIA). SEMO has not previously been determined to be an employer under the RRA and the RUIA.

Information about SEMO was furnished by Mr. Dan Overbey, Executive Director of the Southeast Missouri Regional Port Authority, the parent of SEMO. In a letter dated November 18, 1994, Mr. Overbey stated that SEMO is a subsidiary of the Port Authority and that it acquired the Missouri Pacific Railroad's Cape Girardeau Branch on October 28, 1994. ICC Finance Docket No. 32543 (59 Fed. Reg. 43358) states that SEMO has no employees and all rail service on the line is provided by Respondek Railroad Corporation (Respondek).

Section 1(a)(1) of the RRA defines the term "employer" to include:

(i) any express company, sleeping car company, and carrier by railroad, subject to subchapter I of chapter 105 of Title 49;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

Section 1(a) of the RUIA (45 U.S.C. § 351(a)) contains essentially the same definition.

In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, a majority of the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating

entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, a majority of the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

The evidence of record shows that Respondek is not an employer under the Acts, since it is neither a carrier subject to subchapter I of chapter 105 of Title 49 of the United States Code nor is it under the control of or under common control with any such carrier. Moreover, Respondek is not recognized in the ICC Finance Docket authorizing operation of the line in question as the operator thereof.

Based on the above, the Board, Labor Member Speakman concurring in the result, determines that Semo is an employer covered under the RRA and the RUIA.

The individuals provided to SEMO by Respondek are responsible for all aspects of the movement of freight over the rail line owned by SEMO. SEMO must operate this line in satisfaction of its rail carrier obligation. SEMO must retain ultimate control of the performance of its service as a common carrier. Accordingly, it is the determination of the Board that service performed by employees of Respondek under contract with SEMO is creditable as service as employees of SEMO under the Railroad Retirement and Railroad Unemployment Insurance Acts.

Glen L. Bower

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TO: The Board

FROM: Catherine C. Cook
General Counsel

SUBJECT: SEMO Port Railroad, Inc.
Respondek Railroad Corporation
Employer Status

In a memorandum dated October 30, 1995, the Secretary to the Board stated that the decision in this case was being returned for modification in accord with my memorandum dated August 16, 1995. Based on my review of the previous draft decision and my August 16, 1995 memorandum, I have determined that no change is required to the holding of the earlier decision since SEMO has engaged a non-carrier (Respondek) to provide its rail operations.

Accordingly, under the analysis provided in the August 16, 1995, memorandum SEMO would be a covered employer. The decision has been revised to explain the analysis followed in cases such as this.

Attachment